

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BAYER CORPORATION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. _____

COMPLAINT

Plaintiff Bayer Corporation ("Plaintiff") by and through its attorneys, Polito & Smock, P.C., and Kelley Drye & Warren LLP, for its Complaint against defendant United States of America ("Defendant") alleges as follows:

1. Plaintiff brings this action under sections 6532 and 7422 of the United States Internal Revenue Code (the "Code") (26 U.S.C. §§ 6532 and 7422), for recovery of: (i) federal communications excise taxes Plaintiff paid to the Defendant with respect to the taxable quarter ended September 30, 2000 through quarter ended March 31, 2005 and (ii) statutory interest on such overpayment of tax.

THE PARTIES

2. Plaintiff is a corporation organized under the laws of the State of Indiana with its principal place of business located in Pittsburgh, Pennsylvania. Plaintiff's address is 100 Bayer Road, Pittsburgh, Pennsylvania 15205.

3. For purposes of reporting to the United States Internal Revenue Service (the "IRS"), Plaintiff's Employer Identification Number is 25-1339219, which is reflected on all returns and claims described below.

4. The defendant is the United States of America.

5. The actions complained of herein were taken by representatives of the Commissioner of Internal Revenue.

JURISDICTION AND VENUE

6. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1346(a)(1).

7. Venue is proper within this District pursuant to 28 U.S.C. § 1402(a)(2) because Plaintiff's principal place of business is within this judicial district.

RELIEF SOUGHT

8. Plaintiff seeks to recover an overpayment by Plaintiff of federal communication excise taxes, together with interest as provided by law.

9. Plaintiff paid the communication excise taxes at issue during the quarter ended September 30, 2000 through the quarter ended March 31, 2005.

10. During the quarters listed above, Plaintiff purchased intrastate, interstate, and international long distance telephone service and other communications services from various communications service providers ("Plaintiff's Services").

11. The communications service providers apparently classified the services sold to Plaintiff as taxable toll telephone service under sections 4251 and 4252(b) of the Code. Consequently, they collected federal communication excise taxes from Plaintiff, reported the taxes on IRS Forms 720 and remitted the taxes to the IRS.

12. On October 23, 2003, Plaintiff timely filed a claim for refund for the quarters ended September 30, 2000 through September 30, 2003 with the Internal Revenue

Service Center in Cincinnati, Ohio. On June 17, 2004, Plaintiff timely filed claims for refund for the quarters ended December 31, 2003 through June 30, 2004 with the Internal Revenue Service Center in Cincinnati, Ohio. On July 18, 2005, Plaintiff timely filed claims for refund for the quarters ended September 30, 2004 through March 31, 2005 with the Internal Revenue Service Center in Cincinnati, Ohio. True and correct copies of these claims for refund are attached hereto as Exhibit A. Plaintiff has reviewed its invoices and determined that it is entitled to a refund with respect to the services provided by its communications service providers.

13. The IRS has not allowed Plaintiff's claims for refund of federal communication excise taxes. More than six months have passed since the filing of the refund claims.

14. Section 4251(a) of the Code imposes tax on amounts paid for "communications services." The tax is imposed on the "person paying for such services." Code § 4251(a)(2).

15. Only those communications services described in section 4252(a), (b) and (c) of the Code are potentially subject to the federal communications excise tax imposed by section 4251 of the Code. Code § 4251(a) and (b).

16. None of Plaintiff's Services meets the definition of "local telephone service" or "teletypewriter exchange service." Code § 4252(a) and (c).

17. A service may be a "toll telephone service" for purposes of the federal communications excise tax only if it is described in either section 4252(b)(1) or section 4252(b)(2) of the Code.

18. Section 4252(b)(1) of the Code provides that the term "toll telephone service" means a "telephonic quality communication for which (A) there is a toll charge which

varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States.”

19. The charges for Plaintiff’s Services did not vary in amount with the distance of each individual communication.

20. Accordingly, none of Plaintiff’s Services is described in section 4252(b)(1) of the Code.

21. Section 4252(b)(2) of the Code provides that the term “toll telephone service” includes “a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.”

22. Plaintiff’s Services did not entitle Plaintiff to an unlimited number of calls to a specified area outside a local telephone system area for a charge based on a flat fee or elapsed transmission time.

23. Accordingly, none of Plaintiff’s Services is described in section 4252(b)(2) of the Code.

24. By reason of the foregoing, Plaintiff has overpaid its federal communications excise tax for the taxable quarter ended September 30, 2000 through the quarter ended March 31, 2005. Defendant has refused to refund any part of the overpayment.

25. Plaintiff is the sole owner of this claim and has made no assignment or transfer of any part of this claim or any part thereof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor and against the United States in an amount to be determined at trial, representing overpayment of tax, or such other amount as may be legally refundable, plus interest as provided by law, and for such other and further relief as the Court deems equitable and proper.

Dated: April 17, 2006

Respectfully submitted,

POLITO & SMOCK, P.C.

By: /s/ John H. Riordan, Jr.

John H. Riordan, Jr.

Pa. ID #19922

Four Gateway Center, Suite 400

444 Liberty Avenue

Pittsburgh, Pennsylvania 15222-1237

(412) 394-3333

Of Counsel:

KELLEY DRYE & WARREN, LLP

200 Kimball Drive

Parsippany, New Jersey 07054

(973) 503-5943

EXHIBIT A

A LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY 10178

FAX (212) 808-7897

**TYSONS CORNER
8000 TOWERS CRESCENT DRIVE
SUITE 1200
VIENNA, VA 22182
(703) 918-2300
FAX (703) 918-2450**

106 AVENUE LOUISE
1050 BRUSSELS, BELGIUM
(32)(2) 646-1110
FAX (32)(2) 640-0388

ROBERT J. AARSTAD
DANNY T. AARAS
ROBERT S. ADAMS
TALAT M. ADARI
KEVIN A. ADENWICK
MARK E. ADAMS
M. EDWARDS/ADAMS
DAVID S. ADAMS
DAVID S. ADAMS, P.A.
ROBERT D. ADEHOFF, JR.
JOSEPH A. ADOLF
MICHAEL W. ADAMS
CAROLINE H. AIDOOO
SAMUEL A. AIDOOO, JR.
JAMES E. AIDOOO
SERGEY P. AIDOOO
JOHN M. AIGLEY
BRIAN J. AIGLEY
JONATHAN S. AIGLEY
JOHN C. AIGLEY
ANDREW S. AIGLEY
JOSEPH T. AIGLEY, JR.
CAROLYN B. AIGLEY
MICHAEL S. AIGLEY
JENNIFER M. AIGLEY
MICHAEL J. AIGLEY
JONATHAN S. AIGLEY
JOHN J. AIGLEY
SERGEY P. AIGLEY
JENNIFER M. AIGLEY
MICHAEL S. AIGLEY
JENNIFER M. AIGLEY

[illegible]

KENNETH KOSCHKE
RAYD. KOSCHKE
WILLIAM KOSCHKE
ALAN T. LABAREE
STANLEY T. LAVERGNE
ANDREW LEE
RICHARD L. LINT
JOHN L. LITMAN
PAUL G. MALINOW
GEORGE J. MARCHESE
CHRISTOPHER MASON
PAUL F. MCCREY
GEORGE T. MCKENNEY
LEE MERRILL
TUDOR MELLOROGLOU
ANDREW J. MILES
JOHN J. MINO
JOHN J. MONROE
JAMES MONROE
WILLIAM MONTGOMERY
JENNIFER J. MULLIN
JAMES V. O'BRIEN
FRANK J. O'BRIEN
CHRISTOPHER C. PALMER
DAVID A. PALMER
GABRIEL L. PARD
DAVID R. PETER
RONALD R. PETER
JENNIFER A. PETERSON
KIM C. PETERSON
ANDREW A. SCHWENK
JENNIFER SCHWENK
JAMES C. SHAW
JAMES C. SHAW

WILSON SOLICITORS
MARSH SCHLESINGER
JUDITH S. LINDENBLATT
WILLIAM W. FINE
STEPHEN L. KATZMAN
JOSEPH S. KATZMAN
MICHAEL S. FINE
DAVID S. SCHLES
ELLENBERG & FINE
ANNE WATLANDOFF
DAVID L. VANDERMAN
SHARON & WATLANDOFF
KEVIN J. WALSH
FRANK WATLANDOFF
GILBERT A. WOOD
HOWARD A. YOUNGER, JR.
KATHLEEN J. WOOD
BARNEY POLSKY EDWARD

COOPER

JOHN H. MILLER
MARSH & COOPER
WILLIAM A. COOPER
LILLIAN J. MARSHLEY
JOHN MARSHLEY J. MURPHY
WILLIAM W. FINE
JAMES P. MARSHLEY, JR.
MICHAEL J. MILLER
JOHN W. SCHLES

NOT ADMITTED TO THE WORK

AFFILIATE OFFICERS

WAKHARIYA & WAKHARIYA
41 BAJAJ BHWAN
226 NARIMAN POINT
MUMBAI 400 0021 INDIA
(91)(22) 281-0336
FAX (91)(22) 281-0337

YUMOTO & OTA
KIOS ROYAL HEIGHTS
3-29, KIOS-CHO
CHIYODA-KU
TOKYO 102 JAPAN
(81)(3) 3234-2441
FAX (81)(3) 3262-7729

October 23, 2003

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**Internal Revenue Service Center
Cincinnati, OH 45999-0002**

Re: Bayer Corporation (EIN 25-1339219)

Dear Sir or Madam:

Enclosed please find refund claims with respect to the federal communications excise tax for the periods July 1, 2000 through September 30, 2003. Also enclosed is a power of attorney.

Please acknowledge receipt of the enclosed by signing and dating the extra copy of this letter and returning it to me in the postage-paid envelope provided for this purpose.

Very truly yours,

Frank J. Kelly

Jacob J. Miles

JJM:sh
Enclosures

Form **2848**
(Rev. December 1997)
Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

► See the separate instructions.

OMB No. 1545-0150
For IRS Use Only
Received by: _____
Name _____
Telephone _____
Function _____
Date ____/____/____

Part I Power of Attorney (Please type or print.)

1 Taxpayer information (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205-9741	Social security number(s) _____ _____ _____	Employer identification number 25 1339219
	Daytime telephone number _____	Plan number (if applicable) _____

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) (Representative(s) must sign and date this form on page 2, Part II.)

Name and address Mr. Jacob J. Miles Kelley Drye & Warren 101 Park Avenue New York, NY 10178-0002	CAF No. 2005-78683R..... Telephone No. (212) 808-7574..... Fax No. (212) 808-7897..... Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>

represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Excise Tax	Form 720 and Form 8849	07/2000-09/2003

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. (See instruction for Line 4—Specific uses not recorded on CAF). ☐

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative unless specifically added below, or the power to sign certain returns (see instruction for Line 5—Acts authorized).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: Pertaining
to Excise Taxes collected on taxpayer's telecommunications
services

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.

Note: The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

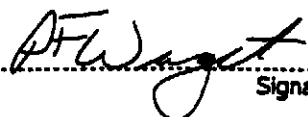
6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here AW and list the name of that representative below.

Name of representative to receive refund check(s) ► Mr. Jacob J. Miles

Form 2848 (Rev. 12-97)

Page 2

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a** If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☐
- b** If you also want the second representative listed to receive a copy of such notices and communications, check this box ☐
- c** If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.
- 9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**


 Signature
 10-15-03
 Date
 UP TAX
 Title (if applicable)

 Print Name

 Signature

 Date

 Title (if applicable)

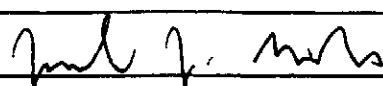
 Print Name

Part II Declaration of Representative

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a** Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b** Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c** Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d** Officer—a bona fide officer of the taxpayer's organization.
 - e** Full-Time Employee—a full-time employee of the taxpayer.
 - f** Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g** Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
 - h** Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(viii) of Treasury Department Circular No. 230.

► **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.**

Designation—Insert above letter (a–h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
a	NY		10/23/03

Form **8821**

(Rev. January 2000)

Department of the Treasury
Internal Revenue Service**Tax Information Authorization**

▶ IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.

OMB No. 1545-1165

For IRS Use Only

Received by:

Name

Telephone

Function

Date

Taxpayer information.

Taxpayer name(s) and address (please type or print)

Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-9741

Social security number(s)

Employer identification number

25 : 1339219

Daytime telephone number

Plan number (if applicable)

2 Appointee.

Name and address (please type or print)

Ginnie Mauro
TSL a division of PRG-Schultz
600 Galleria Pkwy MS 5E.16
Atlanta, GA 30339

CAF No. 0100-61933R

Telephone No. (770) 779-6361

Fax No. (770) 779-3365

Check if new: Address ☐Telephone No. ☐**3 Tax matters.** The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line.

(a) Type of Tax (Income, Employment, Excise, etc.)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s)	(d) Specific Tax Matters (see instr.)
Excise Tax	720 & 8849	07/2000-09/2003	Excise Taxes on Telecommunications Services

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) ☐
If you checked this box, skip lines 5 and 6.**5 Disclosure of tax information** (you must check the box on line 5a or b unless the box on line 4 is checked):**a** If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box ☒**b** If you do not want any copies of notices or communications sent to your appointee, check this box ☐**6 Retention/revocation of tax information authorizations.** This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you MUST attach a copy of any authorizations you want to remain in effect AND check this box ☐
To revoke this tax information authorization, see the instructions on page 2.**7 Signature of taxpayer(s).** If a tax matter applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

Signature

Date

Signature

Date

Print Name

Title (if applicable)

Print Name

Title (if applicable)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of form. Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive your confidential information in any office of the IRS for the type of tax and the years or periods you list on this form. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use Form 2848, Power of Attorney and Declaration of Representative.

Use Form 56, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. If a fiduciary wishes to authorize an appointee to inspect and/or receive confidential tax information on behalf of the fiduciary, Form 8821 must be filed and signed by the fiduciary acting in the position of the taxpayer.

Taxpayer identification numbers (TINs). TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

Form
8849

Department of the Treasury—Internal Revenue Service

Claim for Refund of Excise Taxes

OMB No. 1545-1420

(Rev. January 2002)

Please print in ALL CAPITAL LETTERS. Leave a blank box between words.

Name of claimant

B A Y E R C O R P O R A T I O N

Employer identification number (EIN)

2 5 1 3 3 9 2 1 9

Address (number, street, room or suite no.)

1 0 0 B A Y E R R O A D

Social security number (SSN)

City and state or province. If you have a foreign address, see page 2.

P I T T S B U R G H P A

ZIP code

1 5 2 0 5 9 7 4 1

Foreign country, if applicable. Do not abbreviate.

Month claimant's income
tax year ends

Daytime telephone number (optional)

Caution: Do not use Form 8849 to make adjustments to liability reported on Forms 720 for prior quarters that were or will be made on Form 720X, Amended Quarterly Federal Excise Tax Return, or to claim any amounts that were or will be claimed on Schedule C (Form 720), Claims, or Form 4136, Credit for Federal Tax Paid on Fuels.

Schedules Attached

Check (✓) the appropriate box(es) for the schedule(s) you attach to Form 8849. Only attach the schedules on which you are claiming a refund. Claims on Schedules 2, 3, 5, and section 4091(d) claims on Schedule 6 cannot be combined with any other schedules on Form 8849. File each of these schedules with a separate Form 8849.

Schedule 1	Nontaxable Use of Fuels	<input type="checkbox"/>
Schedule 2	Sales by Registered Ultimate Vendors of Undyed Diesel Fuel and Undyed Kerosene	<input type="checkbox"/>
Schedule 3	Gasohol Blending	<input type="checkbox"/>
Schedule 4	Sales by Gasoline Wholesale Distributors	<input type="checkbox"/>
Schedule 5	Section 4081(e) Claims	<input type="checkbox"/>
Schedule 6	Other Claims	<input checked="" type="checkbox"/>

Under penalties of perjury, I declare (1) that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and (2) that amounts claimed on this form have not been, and will not be, claimed on any other form.

Sign
Here

PF Wagner, VP TAX
Signature and title (if applicable)

1/01/03

Date

Type or print your name below signature.

Schedule 6
Form 8849
Rev. January 2002

Department of the Treasury—Internal Revenue Service

Other Claims

OMB No. 1545-1420

▶ Attach to Form 8849. ▶ See instructions on page 2.

Name as shown on Form 8849

EIN or SSN

Total refund (total of lines 1–9)

Bayer Corporation

25-1339219

\$ 135,000.00

Enter the earliest and latest dates of the events included in this claim. Enter in MMDDYYYY format.

Earliest date ▶ 07/01/2000

Latest date ▶ 09/30/2002

Claimant's registration number for Section 4091(d) claims. ▶ _____

Claim	Amount of refund		CRN
<u>1 July 1, 2000 through September 30, 2000</u>	<u>\$</u>	<u>15,000 00</u>	
<u>2 October 1, 2000 through December 31, 2000</u>		<u>15,000 00</u>	
<u>3 January 1, 2001 through March 31, 2001</u>		<u>15,000 00</u>	
<u>4 April 1, 2001 through June 30, 2001</u>		<u>15,000 00</u>	
<u>5 July 1, 2001 through September 30, 2001</u>		<u>15,000 00</u>	
<u>6 October 1, 2001 through December 31, 2001</u>		<u>15,000 00</u>	
<u>7 January 1, 2002 through March 31, 2002</u>		<u>15,000 00</u>	
<u>8 April 1, 2002 through June 30, 2002</u>		<u>15,000 00</u>	
<u>9 July 1, 2002 through September 30, 2002</u>		<u>15,000 00</u>	

Use the space below for an explanation of each claim listed.

SEE/ ATTACHED

Form 8849 Attachment

Name of Claimant: Bayer Corporation
 Employer Identification Number: 25-1339219
 Type of Return Filed: 720 (No. 22)
 Excise Tax: Communications Excise Tax
 Period of Claim: July 01, 2000 through September 30, 2002
 Amount to be Refunded: \$ 135,000.00 plus interest (See last paragraph of this Attachment.)

This claim is for taxes collected from Claimant, whether directly or through its long distance provider, in connection with excise taxes on communications services (the "Communications Services Excise Tax") pursuant to Section 4251 of the Internal Revenue Code of 1986, as amended (the "Code"). Claim is also made for interest on the overpaid taxes.

Claimant's long distance provider has collected such taxes from Claimant on its virtual private network ("VPN") services. Code Section 4251 does not impose the Communications Services Excise Tax with respect to "private communication services", within the meaning of Code Section 4252(d). VPN services qualify as "private communication services", and, as a result, these are exempt from the Communications Services Excise Tax.

Assuming arguendo that the VPN services do not qualify in their entirety as tax exempt "private communication services", then, (1) to the extent the VPN services are attributable to intra-corporate communication services (i.e., calls between offices of Claimant's affiliated group), such services qualify as "private communication services" and are thus exempt from the Communications Services Excise Tax; and (2) charges for facsimile transmission service are not subject to the Communications Service Excise Tax because this is not a "local telephone service", a toll telephone service" (in as much as it does not provide a telephonic quality communication) or a "teletypewriter exchange service".

In any event, long distance telephone service provided to Claimant does not constitute "toll telephone service", within the meaning of Code Section 4252(b), and is therefore exempt from the communications excise tax, to the extent (1) the charge does not vary in amount with the distance of each individual communication and (2) the service does not entitle Claimant, upon payment of a periodic charge (determined as a flat amount on the basis of toll elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all persons in a specified area.

This claim for refund is inconsistent with Technical Advice Memoranda 9543002 (October 27, 1995) and 9524004 (March 9, 1995), but Claimant believes that the IRS's position in these Technical Advice Memoranda is incorrect.

The Communication Service Excise Tax is a collected tax. This claim is filed pursuant to Rev. Rul. 60-58, 1960-1 CB 638.

Due to the volume and nature of this claim, the relevant invoices and back-up documentation have not been included with the claim. They are available for review through Claimant's long distance provider, however, upon request. Please note that the exact amount of the taxes has not yet been determined. Therefore, the amount of the claim is only an approximation. Claimant reserves the right to amend the amount of the claim.

8849 attachment

Form
8849

Department of the Treasury—Internal Revenue Service

Claim for Refund of Excise Taxes

OMB No. 1545-1420

(Rev. January 2002)

Please print in ALL CAPITAL LETTERS. Leave a blank box between words.

Name of claimant

B A Y E R C O R P O R A T I O N

Employer identification number (EIN)

2 5 1 3 3 9 2 1 9

Address (number, street, room or suite no.)

1 0 0 B A Y E R R O A D

Social security number (SSN)

City and state or province. If you have a foreign address, see page 2.

P I T T S B U R G H P A

ZIP code

1 5 2 0 5 9 7 4 1

Foreign country, if applicable. Do not abbreviate.

Month claimant's income
tax year ends

Daytime telephone number (optional)

Caution: Do not use Form 8849 to make adjustments to liability reported on Forms 720 for prior quarters that were or will be made on Form 720X, Amended Quarterly Federal Excise Tax Return, or to claim any amounts that were or will be claimed on Schedule C (Form 720), Claims, or Form 4136, Credit for Federal Tax Paid on Fuels.

Schedules Attached

Check (✓) the appropriate box(es) for the schedule(s) you attach to Form 8849. Only attach the schedules on which you are claiming a refund. Claims on Schedules 2, 3, 5, and section 4091(d) claims on Schedule 6 cannot be combined with any other schedules on Form 8849. File each of these schedules with a separate Form 8849.

Schedule 1	Nontaxable Use of Fuels	<input type="checkbox"/>
Schedule 2	Sales by Registered Ultimate Vendors of Undyed Diesel Fuel and Undyed Kerosene	<input type="checkbox"/>
Schedule 3	Gasohol Blending	<input type="checkbox"/>
Schedule 4	Sales by Gasoline Wholesale Distributors	<input type="checkbox"/>
Schedule 5	Section 4081(e) Claims	<input type="checkbox"/>
Schedule 6	Other Claims	<input checked="" type="checkbox"/>

Under penalties of perjury, I declare (1) that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and (2) that amounts claimed on this form have not been, and will not be, claimed on any other form.

Sign
Here


Signature and title (if applicable)

UP TAX

1/10-15-03

Date

Type or print your name below signature.

Schedule 6
Form 8849)
(v. January 2002)

Department of the Treasury—Internal Revenue Service

Other Claims

OMB No. 1545-1420

▶ Attach to Form 8849. ▶ See instructions on page 2.

Name as shown on Form 8849

EIN or SSN

Total refund (total of lines 1-8)

Bayer Corporation

25-1339219

\$ 60,000.00

Enter the earliest and latest dates of the events included in this claim. Enter in MMDDYYYY format.

Earliest date ▶ 10/01/2002

Latest date ▶ 09/30/2003

Claimant's registration number for Section 4091(d) claims. ▶ _____

Claim	Amount of refund		CRN
<u>1</u> October 1, 2002 through December 31, 2002	<u>\$</u>	<u>15,000</u> <u>00</u>	
<u>2</u> January 1, 2003 through March 31, 2003		<u>15,000</u> <u>00</u>	
<u>3</u> April 1, 2003 through June 30, 2003		<u>15,000</u> <u>00</u>	
<u>4</u> July 1, 2003 through September 30, 2003		<u>15,000</u> <u>00</u>	
<u>5</u>			
<u>6</u>			
<u>7</u>			
<u>8</u>			
<u>9</u>			

Use the space below for an explanation of each claim listed.

See Attached

Form 8849 Attachment

Name of Claimant: Bayer Corporation
 Employer Identification Number: 25-1339219
 Type of Return Filed: 720 (No. 22)
 Excise Tax: Communications Excise Tax
 Period of Claim: October 01, 2002 through September 30, 2003
 Amount to be Refunded: \$ 60,000.00 plus interest (See last paragraph of this Attachment.)

This claim is for taxes collected from Claimant, whether directly or through its long distance provider, in connection with excise taxes on communications services (the "Communications Services Excise Tax") pursuant to Section 4251 of the Internal Revenue Code of 1986, as amended (the "Code"). Claim is also made for interest on the overpaid taxes.

Claimant's long distance provider has collected such taxes from Claimant on its virtual private network ("VPN") services. Code Section 4251 does not impose the Communications Services Excise Tax with respect to "private communication services", within the meaning of Code Section 4252(d). VPN services qualify as "private communication services", and, as a result, these are exempt from the Communications Services Excise Tax.

Assuming arguendo that the VPN services do not qualify in their entirety as tax exempt "private communication services", then, (1) to the extent the VPN services are attributable to intra-corporate communication services (i.e., calls between offices of Claimant's affiliated group), such services qualify as "private communication services" and are thus exempt from the Communications Services Excise Tax; and (2) charges for facsimile transmission service are not subject to the Communications Service Excise Tax because this is not a "local telephone service", a toll telephone service" (in as much as it does not provide a telephonic quality communication) or a "teletypewriter exchange service".

In any event, long distance telephone service provided to Claimant does not constitute "toll telephone service", within the meaning of Code Section 4252(b), and is therefore exempt from the communications excise tax, to the extent (1) the charge does not vary in amount with the distance of each individual communication and (2) the service does not entitle Claimant, upon payment of a periodic charge (determined as a flat amount on the basis of toll elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all persons in a specified area.

This claim for refund is inconsistent with Technical Advice Memoranda 9543002 (October 27, 1995) and 9524004 (March 9, 1995), but Claimant believes that the IRS's position in these Technical Advice Memoranda is incorrect.

The Communication Service Excise Tax is a collected tax. This claim is filed pursuant to Rev. Rul. 60-58, 1960-1 CB 638.

Due to the volume and nature of this claim, the relevant invoices and back-up documentation have not been included with the claim. They are available for review through Claimant's long distance provider, however, upon request. Please note that the exact amount of the taxes has not yet been determined. Therefore, the amount of the claim is only an approximation. Claimant reserves the right to amend the amount of the claim.

8849 Attachment

SENDER'S USE ONLY

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:
 Internal Revenue Service
 Center
 Cincinnati, OH 45999-0002

2. Article Number
 (Transfer from service label) 7002 2030 0003 7577 1279

3. Service Type
☒ Certified Mail ☐ Registered Mail ☐ Insured Mail
☐ Return Receipt for Merchandise ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

A. Signature
 X

B. Received by (Printed Name)

C. Date of Delivery
 OCT 28 2003

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0085

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
 Certified Fee
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)
 Total Postage & Fees \$4.88

GRAND CENTRAL STATION
 OCT 23 2003
 JACKSONVILLE
 FLA

Sent To
 Internal Revenue Service Center
 Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4
 Cincinnati, OH 45999-0002

PS Form 3811, August 2001

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

101 PARK AVENUE

NEW YORK, NY 10178

TELEPHONE (212) 806-7800
FAX (212) 806-7897300 19TH STREET, N.W.
SUITE 500
WASHINGTON, DC 20036
(202) 955-9600
FAX (202) 955-9792200 KIMBALL DRIVE
PARSIPPANY, NJ 07054
(973) 503-5900
FAX (973) 503-5950TYSONS CORNER
8000 TOWERS CRESCENT DRIVE
SUITE 1200
VIENNA, VA 22182
(703) 918-2300
FAX (703) 918-2450333 WEST WACKER DRIVE
SUITE 2600
CHICAGO, IL 60606
(312) 857-7070
FAX (312) 857-7095TWO STAMFORD PLAZA
281 TRESSER BOULEVARD
STAMFORD, CT 06901
(203) 324-1400
FAX (203) 327-2669106 AVENUE LOUISE
1050 BRUSSELS, BELGIUM
(32)(2) 646-1110
FAX (32)(2) 640-0589ROBERT J. ANNOTH*
DANNY E. ADAMS*
ROBERT S. ADAMS
TALAT M. AHRAZI
STEFAN A. AUGUSTIN*
MARCEL I. BANE
M. BROWNE/FRANKEL
DAVID S. BARRY
DAVID S. BATTHELLER, P.A.*
ROBERT D. BENDIS, JR.
JOSEPH A. BOYLE
RICHARD W. BRADY
CAROLINE J. BROCCOLLO
BARBARA A. BROOKHUIS, JR.*
ROBERT A. BROTHMAN
STEVEN J. CALLEY
JOSEPH M. CALLAGHY
BRIAN J. CALVEY
JONATHAN E. CANN*
JOHN T. CAPETTA*
JAMES S. CARR
JOSEPH T. CAREY, JR.*
CAROLYN A. CAUFIELD
RICHARD S. CHANAR
JENNIFER M. CLARK
RICHARD J. COCCARON
JONATHAN E. COOPERMAN
JOHN J. CONTILLO
ROBERT S. CROTTY
KATHLEEN T. D'AMORENT
JOHN DANES*
RICHARD E. DONOVANPAUL J. DOYLE
W. CHRISTIAN DREWES
ROBERT DREIDEMAN
WILLIAM A. EFCORAN
WALTER I. FANLORER
CHRISTOPHER O. FITZPATRICK
B. MARSHALL FRANKEL
ROBERT S. FREEDMAN
JOSE A. GARRATTY, JR.
PAUL W. GARETTY
JOSEPH F. GIBSON
DOV JAMES S. GILMORE, III*
WILLIAM R. GOLDEN, JR.
JOHN I. GORDON*
STEFAN GROSSBERG*
JAMES S. GROSSBERG*
ROBERT L. HADY
JAMES R. HAYS
WILLIAM C. HICK
RANDOLPH G. HEDON
JOHN J. HETTMAN
BARBARA S. HOEY
JOSEPH S. HOFFMAN*
RUD O. HOLMAN
JOHN O. HODGE*
MICHAEL S. HUBEL
JAMES J. HUBERT
THOMAS C. JACKSON*
PAUL A. JERMAN
HENRY T. KELLY*
THOMAS E. KENZLER
JAMES J. KIRKKIMMOTH KIRSCHNER
JAY R. KOLMAN
WILLIAM A. KOSCELEY
ALAN J. LAMKA
TIMOTHY R. LAVERDIER*
PATRICIA M. LEE
RICHARD E. LUBY
JOHN J. LYNNON
PAUL G. MADISON*
GEORGE J. MARCHESE
CHRISTINA M. MARSON
PAUL J. MCCURDY
GREGORY M. MCKENNA
PETER MERCEL
THOMAS M. MORGAN
JACOB J. NILES
CHRISTOPHER M. NISSELY*
JIMMY NISSELY
BLAIR M. NISSELY*
FREDERICK S. NATHAN
JAMES V. O'BARA
KULAN J. O'BARA
CHRISTOPHER C. P. PALERMO
DAVID A. RAMBOLD*
DAVID L. REED
DAVID E. REITER
RONALD A. REIDON
FREDERICK A. RICHMOND
JOEL S. RYMAN
JEROME A. SCHIFFER*
J. BANCROFT SEITZ*
FRANCIS J. SOGIJULIAN SOLOTOVYCH*
MARK S. SOMMERSTEIN
JUDITH ST. LEBRON-BOTT*
STEPHEN W. STERN
DAVID M. STEINWAY*
JONATHAN STELLER
MERIEL S. STONE
DAVID S. SUZUKI*
ELLEN VA S. TEEZ
ANDREW VAN LAMOUY*
DAVID L. VAN'ERHAN
SHARON S. WAKHARIYA
PETER WOLFFMAN
STEPHEN A. WOOD*
EDWARD A. YORKESTER, JR.*
KATHLEEN YON
KARLEY POLK ELMAN

COUNSEL

ROBERT M. BRIDSON
SAMUEL S. CROSS
RON JAMES A. GOODMAN*
LELAND J. HANLEY
HOWARD H. HANLEY
FIELD V. HENRY*
JAMES J. HENRY, JR.
FREDERICK T. HENRY
JOHN W. HENRY*
*NOT ADMITTED IN NEW YORK

AFFILIATE OFFICES

DEJUDOM & ASSOCIATES
CHARN ISSARA TOWER - 9TH FLOOR
942/142-3 RAMA IV ROAD
BANGKOK 10500 THAILAND
(66)(2) 233-0055
FAX (66)(2) 234-6681SOEBAGJO, JATIM & DIAROT
PLAZA MASHILL, 17TH FLOOR
JALAN JEND, SUDIRMAN KAV. 25
JAKARTA 12920 INDONESIA
(62)(21) 522-9765
FAX (62)(21) 522-9752WAKHARIYA & WAKHARIYA
41 BAJAJ BHAWAN
226 NARIMAN POINT
MUMBAI 400 0021 INDIA
(91)(22) 22810336
FAX (91)(22) 22810337YUMOTO & OTA
KIOI ROYAL HEIGHTS
3-29, KIOI-CHO
CHIYODA-KU
TOKYO 102 JAPAN
(81)(3) 3234-2441
FAX (81)(3) 3262-2729

June 17, 2004

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Internal Revenue Service Center
Cincinnati, OH 45999-0002

Re: Bayer Corporation (EIN: 25-1339219)

Dear Sir or Madam:

Enclosed please find a refund claim with respect to the federal communications excise tax for the periods October 1, 2003 through June 30, 2004. Also enclosed is a power of attorney.

Please acknowledge receipt of the enclosed by signing and dating the extra copy of this letter and returning it to me in the postage-paid envelope provided for this purpose.

Very truly yours,



Jacob J. Miles

JJM:sf
Enclosure

INTERNAL REVENUE SERVICE
RECEIVED

JUN 24 2004

SERVICE CENTER DIRECTOR
COVINGTON, KY
MAIL UNIT

NY01/MILEJ/932968.1

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

101 PARK AVENUE**NEW YORK, NY 10178**TELEPHONE (212) 808-7800
FAX (212) 808-789719TH STREET, N.W.
SUITE 500
WASHINGTON, DC 20036
(202) 955-9600
FAX (202) 955-9792200 KIMBALL DRIVE
PARSHIPPANY, NJ 07054
(973) 503-5900
FAX (973) 503-5950TYSONS CORNER
8000 TOWERS CRESCENT DRIVE
SUITE 1200
VIENNA, VA 22182
(703) 918-2300
FAX (703) 918-2450333 WEST WACKER DRIVE
SUITE 2600
CHICAGO, IL 60606
(312) 857-7070
FAX (312) 857-7095TWO STAMFORD PLAZA
281 TRESSER BOULEVARD
STAMFORD, CT 06901
(203) 324-1400
FAX (203) 327-2669106 AVENUE LOUISE
1050 BRUSSELS, BELGIUM
(32)(2) 646-1110
FAX (32)(2) 640-0589ROBERT J. JAMOTY*
DANNY S. ADAMS*
ROBERT B. ADAMS
TALAT M. AMRANI
STEVEN A. ANTONIO*
MARK I. BARR
M. REDOWAY-BARRON*
DAVID S. BARRY*
DAVID S. BARTCHELLER, P.A.*
ROBERT D. BICKFORD, JR.
JOSEPH A. BOWLE
RICHARD W. BRADY
CAROLINE J. BRIDGECOLE
SAMUEL A. BRIDGECOLE, JR.*
RICHARD G. BRIDGECOLE
STEVEN P. CALEY
JOHN M. CALLAGY
BRIAN J. CALVEY
JONATHAN S. CARR*
JOHN T. CAREY*
JAMES S. CAREY
JONATHAN CAREY, JR.*
CAROLYN R. CAUFFIELD
RICHARD S. CHARGAN
JUSTINE M. CLARK
RICHARD J. COCCARROW
JONATHAN K. COOPERMAN
JOHN J. COVIELLO
ROBERT S. CROTTY
KATHLEEN D'ARMENT
JOHN DANIEL*
RICHARD S. DOMOVANPAUL J. DOYLE
W. CHRISTIAN DREWES
ROBERT DUDOWAN*
WILLIAM A. ECKHART
WALTER T. FAULCHER
CHRISTOPHER O. FITZPATRICK
R. HARRISON FRANKEL
ROBERT S. FRIEDMAN
JOHN A. GABRIEL, JR.
PAUL W. GABRIEL
JOHN J. GIBSON
DOY JAMES S. GILMORE, III*
WILLIAM R. GOLDEN, JR.
JOHN I. GORDON*
FORAN GORDON*
MARK S. GORDON*
ROBERT J. HAD
JAMES S. HAYS
WILLIAM C. HICK
SAMUEL J. HEDIN
JOHN J. HETTMAN
BARBARA L. HOEY
JOSEPH B. HOFFMAN*
SID D. HOLMAN
JOHN S. HODGE*
MICHAEL T. HUBB
JAMES S. JARVIS
THOMAS C. JACKSON*
DALE A. JERMAN
MICHAEL T. KELLY*
THOMAS S. KENZLER
JAMES J. KIRKKENNETH KEDZICKER
JAY R. KOLMAR
WILLIAM A. KROBELY
ALAN J. LAKEA
THOMAS S. LAYENDER*
PATRICIA M. LEE
RICHARD S. LUNY
JOHN J. LYNCH
PAUL G. MADSON*
CHRISTOPHER J. MARCHES
CHRISTOPHER A. MARON
PAUL F. MCCORDY
CHRISTOPHER M. MCKENZIE
MEL MICKEL
YVES MICHELANGELO
JACOB J. MILES
CHRISTOPHER M. MURPHY*
JUN MONT*
WILLIAM M. MUTHEN*
FREDERIC S. NATHAN
JAMES V. O'DARA
RUSAN J. ONUMA
CHRISTOPHER C. PALERMO
DAVID A. RABINELL*
SARAH L. REID
DAVID S. REITER
ROBERT S. REIDMAN
FREDERIC A. ROTHENSTEIN
JOEL A. SCHIFFRILL*
J. BARTON SEITZ*
FRANCIS V. SOGIJULIAN SOLTOROVICK*
MARK R. SOMMERSTEIN
JUDITH ST. LECHE-SOY*
STEPHEN W. STEIN
DANIEL M. STEINWART*
JONATHAN STOLER
MICHAEL B. STONE
DAVID S. STUBBS*
ELIZAVETA S. TIEZ
ANDREW VANLANDUYT*
DAVID L. VANDERLAN
SHABER S. WAKHARIYA
PETER WOLFMAN
STEPHEN A. WOOD*
EDWARD A. YORRISTE, JR.*
K. YOUNG YUN
HARVEY F. ZIMAND

COUNSEL

ROBERT M. BERKOW
SAMUEL S. CHASE
JOHN JAMES A. COCCARROW*
LELAND J. MARLEY
HOWARD S. MURPHY
WILLIAM V. MURPHY*
JAMES J. PETERETTA, JR.
FREDERICK T. SHEL
JOHN W. SHAFER*
*NOT ADMITTED IN NEW YORK

AFFILIATE OFFICES

DEJ-UDOM & ASSOCIATES
CHAIR ISSARA TOWER - 9TH FLOOR
942/142-3 RAMA IV ROAD
BANGKOK 10500 THAILAND
(66)(2) 233-0055
FAX (66)(2) 236-6681SOEBAGJO, IATIM & DIAROT
PLAZA MASHILL, 17TH FLOOR
JALAN JEND. SUDIRMAN KAV. 25
JAKARTA 12920 INDONESIA
(62)(21) 322-9765
FAX (62)(21) 322-9752WAKHARIYA & WAKHARIYA
41 BAJAJ BHAWAN
226 NARIMAN POINT
MUMBAI 400 0021 INDIA
(91)(22) 22810336
FAX (91)(22) 22810337YUMOTO & OTA
KIOI ROYAL HEIGHTS
3-29, KIOI-CHO
CHIYODA-KU
TOKYO 102 JAPAN
(81)(3) 3234-2441
FAX (81)(3) 3262-2729

June 17, 2004

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTEDInternal Revenue Service Center
Cincinnati, OH 45999-0002Re: Bayer Corporation (EIN: 25-1339219)

Dear Sir or Madam:

Enclosed please find a refund claim with respect to the federal communications excise tax for the periods October 1, 2003 through June 30, 2004. Also enclosed is a power of attorney.

Please acknowledge receipt of the enclosed by signing and dating the extra copy of this letter and returning it to me in the postage-paid envelope provided for this purpose.

Very truly yours,


 Jacob J. Miles
JJM:sf
Enclosure

NY01/MILEJ/932968.1

Form **2848**
(Rev. January 2002)
Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

▶ See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

Part I Power of Attorney (Type or print.)

1 Taxpayer Information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address

**Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-9741**

Social security number(s)

Employer identification
number

25: 1339219

Daytime telephone number

() _____

Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

**Mr. Jacob J. Miles Kelley Drye & Warren
101 Park Avenue
New York, NY 10178-0002**

CAF No. **2005-78683R**

Telephone No. **(212) 808-7574**

Fax No. **(212) 808-7897**

Check if new: Address ☐ Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐ Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐ Telephone No. ☐

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (See the instructions for line 3.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Excise Tax	Form 720 and Form 8849	10/01/03 - 06/30/04

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF. ☐

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the authority to execute a request for a tax return, or a consent to disclose tax information unless specifically added below, or the power to sign certain returns. See the instructions for Line 5. Acts authorized.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: **Pertaining to Excise Taxes collected on taxpayer's telecommunications services.**

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.

Note: The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the separate instructions for more information.

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, Initial here PAW and list the name of that representative below.

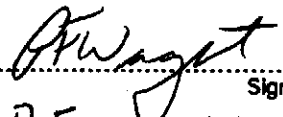
Name of representative to receive refund check(s) ▶

For Paperwork Reduction and Privacy Act Notice, see the separate instructions.

Cat. No. 11980J

Form **2848** (Rev. 1-2002)

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☐
- b If you also want the second representative listed to receive a copy of such notices and communications, check this box. ☐
- c If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- ▶ **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**


 Signature _____ Date 6-14-04 Title (if applicable) VP TAX
 P.F. Wright
 Print Name _____

 Signature _____ Date _____ Title (if applicable) _____

 Print Name _____

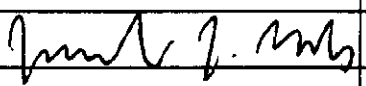
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the separate instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(1)(viii) of Treasury Department Circular No. 230.

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.**

Designation—Insert above letter (a–h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
a	NY		6/17/04

Form **8821**

(Rev. January 2000)

Department of the Treasury
Internal Revenue Service**Tax Information Authorization**

▶ IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.

OMB No. 1545-1185

For IRS Use Only

Received by:

Name

Telephone ()

Function

Date / /

1 Taxpayer information.

Taxpayer name(s) and address (please type or print)

Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-8741

Social security number(s)

Employer identification number

25 : 1339219

Daytime telephone number

Plan number (if applicable)

2 Appointee.

Name and address (please type or print)

Ginnie Mauro
MSS*Group
12 Perimeter Center East Suite 1210
Atlanta, GA 30346

CAF No. 0100-61933R

Telephone No. (770) 512-8280

Fax No. (770) 512-8100

Check if new: Address ☐Telephone No. ☐**3 Tax matters.** The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line.

(a) Type of Tax (Income, Employment, Excise, etc.)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s)	(d) Specific Tax Matters (see Instr.)
Excise Tax	720 & 8849	10/01/03-06/30/04	Excise Taxes on Telecommunications Services

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) ☐

If you checked this box, skip lines 5 and 6.

5 Disclosure of tax information (you must check the box on line 5a or b unless the box on line 4 is checked):a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box ☒b If you do not want any copies of notices or communications sent to your appointee, check this box ☐**6 Retention/revocation of tax information authorizations.** This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you MUST attach a copy of any authorizations you want to remain in effect AND check this box ☐

To revoke this tax information authorization, see the instructions on page 2.

7 Signature of taxpayer(s). If a tax matter applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

Signature: PFW Wright Date: 6-14-04
 Print Name: PFWRIGHT Title (if applicable): VP TAX

Signature: _____ Date: _____
 Print Name: _____ Title (if applicable): _____

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of form. Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive your confidential information in any office of the IRS for the type of tax and the years or periods you list on this form. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use Form 2848, Power of Attorney and Declaration of Representative.

Use Form 56, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. If a fiduciary wishes to authorize an appointee to inspect and/or receive confidential tax information on behalf of the fiduciary, Form 8821 must be filed and signed by the fiduciary acting in the position of the taxpayer.

Taxpayer identification numbers (TINs). TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

Form
8849

Department of the Treasury—Internal Revenue Service

Claim for Refund of Excise Taxes

OMB No. 1545-1420

(Rev. January 2003)

Print clearly. Leave a blank box between words.

Name of claimant

B A Y E R C O R P O R A T I O N

Employer identification number (EIN)

2 5 1 3 3 9 2 1 9

Address (number, street, room or suite no.)

1 0 0 B A Y E R R O A D

Social security number (SSN)

City and state or province. If you have a foreign address, see page 2.

P I T T S B U R G H P A

ZIP code

1 5 2 0 5 9 7 4 1

Foreign country, if applicable. Do not abbreviate.

Month claimant's income
tax year ends

Daytime telephone number (optional)

Caution: Do not use Form 8849 to make adjustments to liability reported on Forms 720 for prior quarters or to claim any amounts that were or will be claimed on Schedule C (Form 720), Claims, Form 4136, Credit for Federal Tax Paid on Fuels, Form 2290, Heavy Highway Vehicle Use Tax Return, or Form 730, Monthly Tax Return On Wagers.

Schedules Attached

Check (✓) the appropriate box(es) for the schedule(s) you attach to Form 8849. Only attach the schedules on which you are claiming a refund. Schedules 2, 3, 5, and section 4091(d) claims on Schedule 6 cannot be filed with any other schedules on Form 8849. File each of these schedules with a separate Form 8849.

Schedule 1	Nontaxable Use of Fuels	<input type="checkbox"/>
Schedule 2	Sales by Registered Ultimate Vendors of Undyed Diesel Fuel and Undyed Kerosene	<input type="checkbox"/>
Schedule 3	Gasohol Blending	<input type="checkbox"/>
Schedule 4	Sales by Gasoline Wholesale Distributors	<input type="checkbox"/>
Schedule 5	Section 4081(e) Claims	<input type="checkbox"/>
Schedule 6	Other Claims	<input checked="" type="checkbox"/>

Under penalties of perjury, I declare (1) that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and (2) that amounts claimed on this form have not been, and will not be, claimed on any other form.

Sign
Here

PFW
Signature and title (if applicable)

6-14-04
Date

Type or print your name below signature.

**Schedule 6
(Form 8849)**

(Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Other Claims

▶ Attach to Form 8849.

OMB No. 1545-1420

Name as shown on Form 8849

Bayer Corporation

EIN or SSN

25-1339219

Total refund (total of lines 1–5)

\$ 45,000.00

Enter the earliest and latest dates of the events included in this claim. Enter in MMDDYYYY format.

Earliest date ▶ 10/01/2003Latest date ▶ 06/30/2004

Claimant's registration number for Section 4091(d) claims. ▶ _____

Tax	Amount of refund		CRN
1 October 1, 2003 through December 31, 2003	\$	15,000	00
2 January 1, 2004 through March 31, 2004		15,000	00
3 April 1, 2004 through June 30, 2004		15,000	00
4			
5			

Use the space below for an explanation of each tax claimed.

For claims under section 6416(b)(2) relating to certain uses and resales of certain articles subject to manufacturers or retailers taxes, claimant certifies that it sold the article at a tax-excluded price, repaid the amount of tax to the ultimate vendor, or has obtained the written consent of the ultimate vendor to make the claim; and has the required supporting evidence.

SEE ATTACHED**Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of schedule. Use Schedule 6 for claims not reportable on Schedules 1–5, including refunds of excise taxes reported on:

- Form 720, Quarterly Federal Excise Tax Return, including section 4091(d) claims;
- Form 2290, Heavy Highway Vehicle Use Tax Return;
- Form 730, Monthly Tax Return for Wagers; and
- Form 11-C, Occupational Tax and Registration Return for Wagering.

Caution: Do not use Schedule 6 to make adjustments to liability reported on Forms 720 filed for prior quarters. Use Form 720X, Amended Quarterly Federal Excise Tax Return. Also, do not use Schedule 6 to claim amounts that were taken or will be taken as a credit on Form 2290 or Form 730.

Claim requirements. Generally, a claim must be filed within 3 years of the filing of the return to which the claim relates, or 2 years from when the tax reported on that return was paid, whichever is later.

How to file. Attach Schedule 6 to Form 8849. Mail it to the IRS at the address under **Where To File** in the Form 8849 instructions. If you are filing a Section 4091(d) claim, write "Section 4091(d)" at the top of Form 8849 and on the envelope. If you attach additional sheets, write your name and taxpayer identification number on each sheet.

Form 8849 Attachment

Name of Claimant: Bayer Corporation
 Employer Identification Number: 25-1339219
 Type of Return Filed: 720 (No. 22)
 Excise Tax: Communications Excise Tax
 Period of Claim: October 1, 2003 through June 30, 2004
 Amount to be Refunded: \$ 45,000.00 plus interest (See last paragraph of this Attachment.)

This claim is for taxes collected from Claimant, whether directly or through its long distance provider, in connection with excise taxes on communications services (the "Communications Services Excise Tax") pursuant to Section 4251 of the Internal Revenue Code of 1986, as amended (the "Code"). Claim is also made for interest on the overpaid taxes.

Claimant's long distance provider has collected such taxes from Claimant on its virtual private network ("VPN") services. Code Section 4251 does not impose the Communications Services Excise Tax with respect to "private communication services", within the meaning of Code Section 4252(d). VPN services qualify as "private communication services", and, as a result, these are exempt from the Communications Services Excise Tax.

Assuming arguendo that the VPN services do not qualify in their entirety as tax exempt "private communication services", then, (1) to the extent the VPN services are attributable to intra-corporate communication services (i.e., calls between offices of Claimant's affiliated group), such services qualify as "private communication services" and are thus exempt from the Communications Services Excise Tax; and (2) charges for facsimile transmission service are not subject to the Communications Service Excise Tax because this is not a "local telephone service", a toll telephone service" (in as much as it does not provide a telephonic quality communication) or a "teletypewriter exchange service".

In any event, long distance telephone service provided to Claimant does not constitute "toll telephone service", within the meaning of Code Section 4252(b), and is therefore exempt from the communications excise tax, to the extent (1) the charge does not vary in amount with the distance of each individual communication and (2) the service does not entitle Claimant, upon payment of a periodic charge (determined as a flat amount on the basis of toll elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all persons in a specified area.

This claim for refund is inconsistent with Technical Advice Memoranda 9543002 (October 27, 1995) and 9524004 (March 9, 1995), but Claimant believes that the IRS's position in these Technical Advice Memoranda is incorrect.

The Communication Service Excise Tax is a collected tax. This claim is filed pursuant to Rev. Rul. 60-58, 1960-1 CB 638.

Due to the volume and nature of this claim, the relevant invoices and back-up documentation have not been included with the claim. They are available for review through Claimant's long distance provider, however, upon request. Please note that the exact amount of the taxes has not yet been determined. Therefore, the amount of the claim is only an approximation. Claimant reserves the right to amend the amount of the claim.

8849 attachment

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Internal Revenue Service Center
Cincinnati, OH 45999-0002

2. Article Number (Copy from service label)

7000060000269030 7103

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address

☐ No

RECEIVED

JUN 24 2004

3. Service Type

☒ Certified Mail, Return Receipt for Merchandise☐ Registered☐ Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only, Restricted to First-Class Mail®)

Postage

\$

83

Certified Fee

230

Return Receipt Fee
(Endorsement Required)

175

Restricted Delivery Fee
(Endorsement Required)

4.88

Total P

Recipient

Street, A

City, State

Internal Revenue Service Center
Cincinnati, OH 45999-0002

E012 DE06 9200 0090 0002

2004
JUN 24
J. MILES
BAYER

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

101 PARK AVENUE**NEW YORK, NY 10178**TELEPHONE (212) 806-7800
FAX (212) 806-78971200 19TH STREET, N.W.
SUITE 508
WASHINGTON, DC 20036
(202) 933-9600
FAX (202) 933-9792200 KIMBALL DRIVE
PARLISSANY, NJ 07034
(973) 503-5900
FAX (973) 503-5930TYSONS CORNER
8000 TOWERS CRESCENT DRIVE
SUITE 1200
VIENNA, VA 22182
(703) 918-3300
FAX (703) 918-2450333 WEST WACKER DRIVE
SUITE 2600
CHICAGO, IL 60606
(312) 837-7070
FAX (312) 837-7085TWO STAMFORD PLAZA
281 TRESSER BOULEVARD
STAMFORD, CT 06904
(203) 324-1490
FAX (203) 327-2669106 AVENUE LOUISE
1050 BRUSSELS, BELGIUM
(32)(2) 646-1110
FAX (32)(2) 640-0580ROBERT L. AMOS*
DAVID E. ADAMS*
ROBERT S. ADAMS
TALAT M. AHMED
STEVEN A. ALBERTSON*
MAGUIE L. BARR
M. BENJAMIN BAKER*
DAVID S. BARRY
DAVID S. BARTCHILLER, P.A.*
ROBERT D. BICKFORD, JR.
MARY JO BOLGER*
JOHN A. BOYLE
NICHOLAS W. BRADY
ANDREW A. BROOKMAN, JR.*
NICHOLAS J. BROWNE*
STEVEN R. CALIST
JOHN M. CALLAGH
BRIAN J. CALVER
JONATHAN E. CAMP
JOHN T. CAPRYA*
JAMES S. CASE
KIMBERLY T. CASEY, JR.*
GEOFFREY W. CASTELLO
CAROLYN E. CAMPBELL
NICHOLAS A. CHANDLER
JENNIFER M. CLARK
MICHAEL A. COOK-ARMON
JONATHAN E. COOPERMAN
JOHN A. COSTELLO
ROBERT E. CROTTY
ROBERT T. D'AMICO*
JOHN DANIEL*TODD D. DAUBERT
BARRY DAVIDOW
NICHOLAS S. DONOVAN
PAUL P. DOWLE
W. CHRISTOPHER DREWES
ROBERT DUNBAR*
WILLIAM A. DUNN*
WALTER T. ELLER*
CHRISTOPHER G. FIDYPATRICK
B. HARRISON FLEMING
ROBERT S. FRIEDMAN
JOHN A. GAMBATTI, JR.
PAUL W. GARNETT
JOHN F. GIBSON
JOY, JAMES S. GILMORE, JR.*
WILLIAM S. GILSON, JR.
SILVIA GREENBERG*
MARK S. GROSS*
ROBERT L. HART
JAMES S. HAYS
WILLIAM C. HICK
SAMUEL E. HICK
JOHN A. HIGHTMAN
BARBARA E. JONES
JENNIFER B. JOHNSON*
BRIAN G. JOHNSON
STEPHEN J. JOYNER
JOHN G. KAPLAN*
MICHAEL S. KAPLAN
JAMES H. KAPLAN
PAUL A. KAPLAN
HENRY T. KELLY*THOMAS S. KIMBLE
JAMES I. KIRK
KIMBERLY KLEINBERG
WILLIAM A. KOSLOFF
ERIC G. KUBIEV
ALAN I. LAURE
THEODORE S. LAVIN*
PATRICIA M. LEE
NICHOLAS E. LEE
JOHN L. LYKAKIS
PAUL G. MADISON*
GEOFFREY A. MARSHMAN
CHRISTINA M. MARSH
PAUL R. MCCORMY
CHRISTOPHER M. MCCORMY
MEL. MILES
JACOB S. MILAN
CHRISTOPHER M. MURPHY*
JUN MORG
BRAD M. MURPHY*
FREDERIC S. NATHAN
JAMES V. NYGARA
ELIAN I. OLSHA
CHRISTOPHER C. PALERMO
NICHOLAS A. PARNELL
DAVID A. RABINOVITZ*
SARAH I. RHO
DAVID B. RYDER
FREDERICK A. RYDERMAN
JOEL S. RYDER
ANDREW A. SCHWARTZ*
NICHOLAS A. SEGALFRANCIS V. SOLO
ALAN SOLOVITZ*
MARK S. SOLOVITZ*
STEPHEN W. STERN
JONATHAN STOLER
MICHAEL S. STONE
DAVID S. STUBBS*
BARBARA S. TITZ
ANDREW VAN LANSBURY*
DAVID L. VANDERMAN
NICHOLAS S. WAKHARIYA
PETER WELLS*
KURT E. WOFFORD
STEPHEN A. WOOD*
STEWART A. YORRIS*
STEFANO YUE
HARVEY FOLEY ZIMAND

COLABEL

SARAH E. CHEN
AVERTY FUCHS
BENJAMIN A. GOODMAN*
LELAND I. HANLEY*
BENJAMIN T. HANLEY
PETER V. HANLEY*
FREDERICK T. HANLEY
JOHN W. HANLEY*

*NOT ADMITTED IN NEW YORK

AFFILIATE OFFICESSOERBAGIO, JATM & DIANOT
PLAZA MASHILL, 17TH FLOOR
JALAN HIND, BUDURMAN KAV. 25
JAKARTA 12920 INDONESIA
(62)(21) 522-9765
FAX (62)(21) 522-9752WAKHARIYA & WAKHARIYA
41 BAJAJ BHAWAN
226 NARAYAN POINT
MUMBAI 400 002 INDIA
(91)(22) 22810334
FAX (91)(22) 22810337

July 18, 2005

INTERNAL REVENUE SERVICE
RECEIVED

JUL 25 2005

SERVICE CENTER DIRECTOR
COVINGTON, KY
MAIL UNIT # 67**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**Internal Revenue Service Center
Cincinnati, OH 45999-0002Re: Bayer Corporation & Subsidiaries (EIN: 25-1339219)

Dear Sir or Madam:

Enclosed please find refund claims with respect to the federal communications excise tax for the periods July 1, 2004 through March 31, 2005. Also enclosed is a power of attorney.

Please acknowledge receipt of the enclosed by signing and dating the extra copy of this letter and returning it to me in the postage-paid envelope provided for this purpose.

Very truly yours,



Jacob J. Miles

Enclosures

NY01/TORMC/1033921.1

Form
8849

Department of the Treasury—Internal Revenue Service

Claim for Refund of Excise Taxes

OMB No. 1545-1420

(Rev. January 2003)

Print clearly. Leave a blank box between words.

Name of claimant

B A Y E R C O R P O R A T I O N

Employer identification number (EIN)

2 5 1 3 3 9 2 1 9

Address (number, street, room or suite no.)

1 0 0 B A Y E R R O A D

Social security number (SSN)

City and state or province. If you have a foreign address, see page 2.

P I T T S B U R G H P A

ZIP code

1 5 2 0 5 8 7 4 1

Foreign country, if applicable. Do not abbreviate.

Month claimant's income
tax year ends

Daytime telephone number (optional)

Caution: Do not use Form 8849 to make adjustments to liability reported on Forms 720 for prior quarters or to claim any amounts that were or will be claimed on Schedule C (Form 720), Claims, Form 4136, Credit for Federal Tax Paid on Fuels, Form 2290, Heavy Highway Vehicle Use Tax Return, or Form 730, Monthly Tax Return On Wagers.

Schedules Attached

Check (✓) the appropriate box(es) for the schedule(s) you attach to Form 8849. Only attach the schedules on which you are claiming a refund. Schedules 2, 3, 5, and section 4091(d) claims on Schedule 6 cannot be filed with any other schedules on Form 8849. File each of these schedules with a separate Form 8849.

Schedule 1	Nontaxable Use of Fuels	<input type="checkbox"/>
Schedule 2	Sales by Registered Ultimate Vendors of Undyed Diesel Fuel and Undyed Kerosene	<input type="checkbox"/>
Schedule 3	Gasohol Blending	<input type="checkbox"/>
Schedule 4	Sales by Gasoline Wholesale Distributors	<input type="checkbox"/>
Schedule 5	Section 4091(e) Claims	<input type="checkbox"/>
Schedule 6	Other Claims	<input checked="" type="checkbox"/>

Sign
Here

Under penalties of perjury, I declare (1) that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and (2) that amounts claimed on this form have not been, and will not be, claimed on any other form.

PF Wagner
Signature and title (if applicable)

VP TAX

7-8-05

Date

Type or print your name below signature.

Schedule B
(Form 8849)
(Rev. January 2003)

Department of the Treasury—Internal Revenue Service

Other Claims

▶ Attach to Form 8849.

OMB No. 1545-1420

Name as shown on Form 8849
Bayer Corporation

EIN or SSN

25-1339219

Total refund (total of lines 1–5)
\$ 42,000.00

Enter the earliest and latest dates of the events included in this claim. Enter in MMDDYYYY format.

Earliest date ▶ 07012004

Latest date ▶ 03312005

Claimant's registration number for Section 4091(d) claims. ▶ _____

Tax		Amount of refund		CRN
1	July 1, 2004 through September 30, 2004	\$	14,000	00
2	October 1, 2004 through December 31, 2004		14,000	00
3	January 1, 2005 through March 31, 2005		14,000	00
4				
5				

Use the space below for an explanation of each tax claimed.

For claims under section 5416(b)(2) relating to certain uses and resales of certain articles subject to manufacturers or retailers taxes, claimant certifies that it sold the article at a tax-excluded price, repaid the amount of tax to the ultimate vendor, or has obtained the written consent of the ultimate vendor to make the claim; and has the required supporting evidence.

SEE ATTACHED

Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of schedule. Use Schedule B for claims not reportable on Schedules 1–5, including refunds of excise taxes reported on:

- Form 720, Quarterly Federal Excise Tax Return, including section 4091(d) claims;
- Form 2290, Heavy Highway Vehicle Use Tax Return;
- Form 730, Monthly Tax Return for Wagers; and
- Form 11-C, Occupational Tax and Registration Return for Wagering.

Caution: Do not use Schedule B to make adjustments to liability reported on Forms 720 filed for prior quarters. Use Form 720X, Amended Quarterly Federal Excise Tax Return. Also, do not use Schedule B to claim amounts that were taken or will be taken as a credit on Form 2290 or Form 730.

Claim requirements. Generally, a claim must be filed within 3 years of the filing of the return to which the claim relates, or 2 years from when the tax reported on that return was paid, whichever is later.

How to file. Attach Schedule B to Form 8849. Mail it to the IRS at the address under Where To File in the Form 8849 Instructions. If you are filing a Section 4091(d) claim, write "Section 4091(d)" at the top of Form 8849 and on the envelope. If you attach additional sheets, write your name and taxpayer identification number on each sheet.

Form 8849 Attachment

Name of Claimant: Bayer Corporation
 Employer Identification Number: 25-1339219
 Type of Return Filed: 720 (No. 22)
 Excise Tax: Communications Excise Tax
 Period of Claim: July 1, 2004 through March 31, 2005
 Amount to be Refunded: \$ 42,000.00 *plus interest* (See last paragraph of this Attachment.)

This claim is for taxes collected from Claimant, whether directly or through its long distance provider, in connection with excise taxes on communications services (the "Communications Services Excise Tax") pursuant to Section 4251 of the Internal Revenue Code of 1986, as amended (the "Code"). Claim is also made for interest on the overpaid taxes.

Claimant's long distance provider has collected such taxes from Claimant on its virtual private network ("VPN") services. Code Section 4251 does not impose the Communications Services Excise Tax with respect to "private communication services", within the meaning of Code Section 4252(d). VPN services qualify as "private communication services", and, as a result, these are exempt from the Communications Services Excise Tax.

Assuming arguendo that the VPN services do not qualify in their entirety as tax exempt "private communication services", then, (1) to the extent the VPN services are attributable to intra-corporate communication services (i.e., calls between offices of Claimant's affiliated group), such services qualify as "private communication services" and are thus exempt from the Communications Services Excise Tax; and (2) charges for facsimile transmission service are not subject to the Communications Service Excise Tax because this is not a "local telephone service", a toll telephone service" (in as much as it does not provide a telephonic quality communication) or a "teletypewriter exchange service".

In any event, long distance telephone service provided to Claimant does not constitute "toll telephone service", within the meaning of Code Section 4252(b), and is therefore exempt from the communications excise tax, to the extent (1) the charge does not vary in amount with the distance of each individual communication and (2) the service does not entitle Claimant, upon payment of a periodic charge (determined as a flat amount on the basis of toll elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all persons in a specified area.

This claim for refund is inconsistent with Technical Advice Memoranda 9543002 (October 27, 1995) and 9524004 (March 9, 1995), but Claimant believes that the IRS's position in these Technical Advice Memoranda is incorrect.

The Communication Service Excise Tax is a collected tax. This claim is filed pursuant to Rev. Rul. 60-58, 1960-1 CB 638.

Due to the volume and nature of this claim, the relevant invoices and back-up documentation have not been included with the claim. They are available for review through Claimant's long distance provider, however, upon request. Please note that the exact amount of the taxes has not yet been determined. Therefore, the amount of the claim is only an approximation. Claimant reserves the right to amend the amount of the claim.

8849 Instructions

Form **2848**
(Rev. March 2004)
Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

► Type or print. ► See the separate instructions.

OMB No. 1545-0180

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

Part I

Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address

Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-9741

Social security number(s)

Employer identification
number

25 : 1339219

Daytime telephone number

Plan number (if applicable)

heraby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

Mr. Jacob J. Miles Kelley Drye & Warren
101 Park Avenue
New York, NY 10178-0002

CAF No. 2005-78683R

Telephone No. (212) 808-7574

Fax No. (212) 808-7897

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address

Christine Tormey Kelley Drye & Warren
101 Park Avenue
New York, NY 10178-0002

CAF No. 0100-09978R

Telephone No. (212) 808-7930

Fax No. (212) 808-7897

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Excise Tax	Form 720 and Form 8849	07/01/04 - 03/31/05

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF. ☐

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See Unenrolled Return Preparer on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: Pertaining to Excise
Taxes collected on taxpayer's telecommunications services.

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ►

Form 2848 (Rev. 3-2004)

Page 2

- 7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a If you also want the second representative listed to receive a copy of notices and communications, check this box ☐
- b If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- ▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

Signature: PTW Wager Date: 7-8-05 Title (if applicable): UPTAX

Print Name: _____ PIN Number: ☐☐☐☐☐ Print name of taxpayer from line 1 if other than individual: _____

Signature: _____ Date: _____ Title (if applicable): _____

Print Name: _____ PIN Number: ☐☐☐☐☐

Part III Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 2 of the instructions.

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a-h)	Jurisdiction (state) or identification	Signature	Date
a	NY	<u>Mark J. Smith</u>	<u>7/18/05</u>
a	NY	<u>Christi E. Smith</u>	<u>7/18/05</u>

Form 2848 (Rev. 3-2004)

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by (Please Print Clearly) _____ B. Date of Delivery _____</p>	
<p>1. Article Addressed to:</p> <p>Internal Revenue Service Center Cincinnati, OH 45999-0002</p>		<p>C. Signature X _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, enter delivery address below: _____</p> <p>RECEIVED BY CAMPOS JUL 25 2005 CINCINNATI, KY</p>	
<p>2. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>			

<p>Form 8821</p> <p>(Rev. April 2004)</p> <p>Department of the Treasury</p> <p>Internal Revenue Service</p>	<p>Tax Information Authorization</p> <p>► Do not use this form to request a copy or transcript of your tax return. Instead, use Form 4506 or Form 4506-T.</p>	<p>OMB No. 1545-0047</p> <p>For IRS Use Only</p> <p>Received by: _____</p> <p>Name: _____</p> <p>Telephone: () _____</p> <p>Position: _____</p> <p>Date: / /</p>
--	--	---

1 Taxpayer information. Taxpayer(s) must sign and date this form on line 7.

<p>Taxpayer name(s) and address (type or print)</p> <p>Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205-0741</p>	<p>Social security number(s)</p> <p>_____</p> <p>Daytime telephone number</p> <p>() _____</p>	<p>Employer identification number</p> <p>25: 1338219</p> <p>Plan number (if applicable)</p> <p>_____</p>
---	--	--

2 Appointee. If you wish to name more than one appointee, attach a list to this form.

<p>Name and address</p> <p>Glinnie Mauro 12 Perimeter Center East Suite 1210 Atlanta, GA 30346</p>	<p>CAF No. 0100-61933R</p> <p>Telephone No. (770) 512-8290</p> <p>Fax No. (770) 512-8100</p> <p>Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/></p>
--	--

3 Tax matters. The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line. Do not use Form 8821 to request copies of tax returns.

(a) Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s) (see the instructions for line 3)	(d) Specific Tax Matters (see instr.)
Excise Tax	720 & 8849	07/01/04 - 03/31/05	Excise Taxes on Telecommunications Services

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. See the instructions on page 3. If you check this box, skip lines 5 and 6. ► ☐

5 Disclosure of tax information (you must check a box on line 5a or 5b unless the box on line 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box. ► ☒

b If you do not want any copies of notices or communications sent to your appointee, check this box. ► ☐

6 Retention/revocation of tax information authorizations. This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed on line 3 above unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you must attach a copy of any authorizations you want to remain in effect and check this box. ► ☐

To revoke this tax information authorization, see the instructions on page 3.

7 Signature of taxpayer(s). If a tax matter applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods on line 3 above.

► IF NOT SIGNED AND DATED, THIS TAX INFORMATION AUTHORIZATION WILL BE RETURNED.

<p>Signature: <u>AF Wright</u></p> <p>Date: <u>17-8-05</u></p>	<p>Signature: _____</p> <p>Date: _____</p>
<p>Print Name: <u>P F WRIGHT</u></p> <p>Title (if applicable): <u>UPTAX</u></p> <p><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN number for electronic signature</p>	<p>Print Name: _____</p> <p>Title (if applicable): _____</p> <p><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN number for electronic signature</p>